

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM EDWIN AGUILERA,

Plaintiff,

v.

Commissioner of Social Security,

Defendant.

CASE NO. 1:21-cv-00819-GSA

ORDER GRANTING MOTION FOR ATTORNEY
FEES PURSUANT TO 42 U.S.C. 406(b)

(Doc. 24)

Plaintiff's counsel Jonathon O. Peña seeks an award of attorney fees pursuant to 42 U.S.C. § 406(b).

I. Background

Plaintiff entered into a contingent fee agreement with counsel which provides for attorney fees of 25% of the past due benefits awarded. Doc. 24-3. The agreement also provides that counsel would seek fees pursuant to the Equal Access to Justice Act (EAJA), fees which would be refunded in the event of an award of past due benefits and payment of the 25% contingency fee. *Id.*

Plaintiff filed a complaint in this Court on May 20, 2021 appealing the Commissioner's decision denying his application for benefits. Plaintiff filed his motion for summary judgment (Doc. 17), after which the parties stipulated to remand to the agency for further proceedings (Docs. 18–20), and counsel was awarded EAJA fees in an amount of \$6,453.82 (Doc. 23).

On remand, the agency determined that Plaintiff was disabled and entitled to past due benefits as of April 2018 (Doc. 24-2 at 3) of which the agency withheld 25% (\$27,699.75) for payment to counsel (Doc. 24-2 at 5).

II. Legal Standard

An attorney may seek an award of fees for representation of a Social Security claimant who is awarded benefits:

Whenever a court renders a judgment favorable to a claimant under [42 USC § 401, et seq] who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent

1 of the total of the past-due benefits to which the claimant is entitled by reason of such
2 judgment . . .

3 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
4 controls fees awarded for representation of Social Security claimants). A contingency fee agreement is
5 unenforceable by the Court if it provides for fees exceeding the statutory amount. *Gisbrecht*, 535 U.S. at
6 807 (“Congress has provided one boundary line: Agreements are unenforceable to the extent that they
7 provide for fees exceeding 25 percent of the past-due benefits.”).

8 District courts “have been deferential to the terms of contingency fee contracts § 406(b) cases.”
9 *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). However, the Court must review
10 contingent-fee arrangements “as an independent check, to assure that they yield reasonable results in
11 particular cases.” *Gisbrecht*, 535 U.S. at 807. In doing so, the Court should consider “the character of the
12 representation and the results the representative achieved.” *Id.* at 808. In addition, the Court should
13 consider whether the attorney performed in a substandard manner or engaged in dilatory conduct or
14 excessive delays, and whether the fees are “excessively large in relation to the benefits received.”
15 *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc); *Vazquez v. Com'r of Soc. Sec.*, No.
16 1:17-CV-1646-JLT, 2020 WL 2793059, at *2 (E.D. Cal. May 29, 2020).

17 **III. Analysis**

18 Here, Plaintiff was represented by experienced counsel and achieved a favorable result, namely a
19 stipulation to remand, entry of judgment, and ultimately a substantial award of past due benefits. There
20 is no indication that counsel engaged in dilatory conduct, excessive delay, or substandard performance.
21 Counsel’s itemized bill reflects 28 hours of time to review the 1,584 page administrative record and draft
22 a detailed motion for summary judgment, the potential merits of which were ostensibly a factor motivating
23 Defendant’s decision to stipulate to remand the matter. Doc. 24-4. 28 Hours is a reasonable time
24 expenditure for the performance of those tasks. The effective hourly rate amounts to \$989.27 per hour.
25 Although this is a substantial hourly rate, the fee award would not amount to a windfall. Unlike fee
26 motions governed entirely by the lodestar method, in contingency fee matters pursuant to section 406(b)
27 the lodestar is merely a guidepost and a comparatively high effective hourly rate is generally warranted to
28

1 compensate counsel for the risk assumed in representing social security claimants. *See Crawford v.*
2 *Astrue*, 586 F.3d 1142, 1148 (9th Cir. 2009).

3 The effective hourly rate is commensurate with rates approved by other courts under section
4 406(b). *See, e.g., Kazanjian v. Astrue*, 2011 WL 2847439, at * 2 (E.D.N.Y. July 15, 2011) awarded
5 \$48,064.00 based on 19.75 hours of court work for an effective hourly rate of \$2,433); *Williams v. Berryhill*,
6 No. EDCV 15-919-KK, 2018 WL 6333695, at *2 (C.D. Cal. Nov. 13, 2018) (effective hourly rate of
7 \$1,553.36); *Coles v. Berryhill*, No. EDCV 14-1488-KK, 2018 WL 3104502, at *3 (C.D. Cal. June 21,
8 2018) (effective hourly rate of \$1,431.94); *Palos v. Colvin*, No. CV 15-04261-DTB, 2016 WL 5110243,
9 at *2 (C.D. Cal. Sept. 20, 2016) (\$1,546.39 per hour).

10 The \$27,699.75 total amount is also consistent with total contingent fee awards granted under
11 section 406(b). *See, e.g., Ortega v. Comm'r of Soc. Sec.*, No. 1:12-cv-01030-AWI-SAB, 2015 WL
12 5021646, at *3 (E.D. Cal. Aug. 21, 2015) (\$24,350); *Thomas v. Colvin*, No. 1:11-cv-01291-SKO, 2015
13 WL 1529331, at *3 (E.D. Cal. Apr. 3, 2015) (\$44,603.50); *Boyle v. Colvin*, No. 1:12-cv-00954-SMS,
14 2013 WL 6712552, at *2 (E.D. Cal. Dec. 19, 2013) (\$20,577.57); *Jamieson v. Astrue*, No. 1:09-cv-00490-
15 LJO-DLB, 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (\$34,500).

16 Considering the character of the representation, the result achieved, and the fee amounts awarded
17 in similar cases, the request here is reasonable.

18 Accordingly, it is **ORDERED** as follows:

- 19 1. Counsel's motion for attorney fees pursuant to 42 U.S.C. 406(b) (Doc. 24) is granted.
- 20 2. The Commissioner shall certify a payment of a gross award in the amount of \$27,699.75
21 to: Jonathon O. Peña.
- 22 3. Upon receipt of this sum, Jonathon O. Peña shall remit directly to Plaintiff William Edwin
23 Aguilera the EAJA fees previously awarded in the amount of \$\$6,453.82.

24
25 IT IS SO ORDERED.

26 Dated: August 23, 2024

/s/ Gary S. Austin
27 UNITED STATES MAGISTRATE JUDGE
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